

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION**

**ROBERT TROHA and FREDERICK
BIGNALL on behalf of themselves and all
others similarly situated,**

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 05-191-E

**MOTION OF RAILS-TO-TRAILS CONSERVANCY TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF DEFENDANT UNITED STATES OF AMERICA'S MOTION FOR
SUMMARY JUDGMENT**

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Conservancy

January 19, 2007

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Rails-to-Trails Conservancy, a national nonprofit conservation organization with offices in Washington, D.C., California, Florida, Massachusetts, Ohio, and Pennsylvania, hereby seeks leave to participate in this case as *amicus curiae* in support of Defendant’s Motion for Summary Judgment in the above captioned-matter. This motion and brief are filed at the same time as Defendant’s brief is due, and are thus timely.

BACKGROUND

1. This case was brought by several persons who own land that abuts a railroad right of way owned by Allegheny & Eastern Railroad, Inc. (“A&E”).

2. The right of way at issue in this case is 18.9 miles long and runs through both Elk County and Cameron County, Pennsylvania. Joint Statement of Facts at ¶¶ 1-2.

3. Plaintiffs allege that they have an ownership interest in the right of way that has been taken as a result of the Surface Transportation Board’s (“STB”) issuance of a

decision and Notice of Interim Trail Use (“NITU”) pursuant to the Section 8(d) of the National Trails System Act (“Federal Railbanking Law”).

4. The Federal Railbanking Law established a mechanism, often referred to as “railbanking,” whereby railroads wishing to cease operations on particular lines would be encouraged, but not required, to convey those lines to States, local governments, or qualified private organizations that would manage and operate the rights of way as interim trails pending future reactivation of rail use. *See* 16 U.S.C. 1241 *et seq.*

5. Under the statute as implemented by STB regulations, if a railroad seeking abandonment authorization notifies the agency of its willingness to negotiate an agreement with a State, political subdivision or qualified private organization for railbanking and interim trail use, the agency will issue a Certificate of Interim Trail Use (“CITU”) or, in exempt abandonment cases, a Notice of Interim Trail Use (“NITU”). 49 C.F.R. § 1152.29.

6. If an agreement is reached, the CITU or NITU provides that the right of way will be transferred to the trail operator for interim trail use, “subject to future restoration of rail service.” 49 C.F.R. § 1152.29(c)(2).

7. On September 11, 2003, A&E filed a notice with the STB seeking authorization to abandon the right of way at issue in this case. Joint Statement of Facts at ¶7.

8. On October 14, 2003, both Elk County and Cameron County filed a request with the STB for issuance of a NITU for the right of way under the Trails Act. *Id.* at ¶¶ 9-10.

9. On October 23, 2003, A&E notified the STB that it was willing to negotiate with Elk and Cameron Counties regarding the potential railbanking and interim trail use of the subject right of way. *Id.* at ¶11.

10. On October 30, 2003, the STB issued a decision and NITU for the right of way. *Id.* at ¶12.

11. The parties have until January 13, 2007 to negotiate an acquisition of the right of way for railbanking and interim trail use purposes pending the outcome of this case.¹ *Id.* at ¶17.

INTERESTS OF AMICUS CURIAE

12. Rails-to-Trails Conservancy (“RTC”) is a nonprofit corporation formed in 1985, with more than 76,309 members nationwide, including approximately 7,413 active members in the Commonwealth of Pennsylvania.

13. The mission of RTC is to create a nationwide network of trails from former rail lines and connecting corridors to build healthier places for healthier people.

14. Specifically, RTC identifies rail corridors that are not currently needed for rail transportation and facilitates their preservation and continued public use through conversion to public trails, non-motorized transportation corridors, and other public uses.

15. According to records maintained by RTC, Pennsylvania presently has 116 open rail-trails totaling 1100 miles, and efforts are presently underway to acquire and preserve 120 additional former railroad corridors as trails.

16. Representation of the interests of state- and county-wide trail users and future users of these corridors for rail transportation will assist the Court in identifying and considering those interests and resolving this case.

¹ “Parties” refers to A&E, Cameron County and the West Creek Recreational Trail Association, which has been substituted for Elk County as the trail sponsor. Joint Statement of Facts at ¶18.

17. The experience of RTC with federal railbanking, as well as RTC's extensive participation in state and federal litigation, gives RTC useful perspective on the pending legal issues.

18. RTC has considerable expertise in the legal issues raised in this case, and has participated in numerous cases involving the ownership of railroad corridors under state law, including the laws of this Commonwealth.²

19. RTC has also taken part in numerous cases involving claims that the Federal Railbanking Law has "taken" private property, which frequently focus on whether the claimants possess an ownership interest in the corridor under state law.³

² See, e.g., *Moody v. Alleghany Valley Land Trust*, No. 914 WDA 2006 (Pa Super. Ct.); *Chevy Chase Land Co. v. United States*, 733 A.2d 1055 (Md. 1999); *State v. Hess*, 684 N.W.2d 414 (Minn. 2004); *Rowley v. Massachusetts Electric Co.*, 784 N.E.2d 1085 (Mass. 2003); *Lowers v. United States*, 663 N.W.2d 408 (2002); *Malnati v. State of New Hampshire*, 803 A.2d 587 (NH 2002); *Township of Bingham v. RLTD Railroad Corporation and Leelanau Trails Ass'n*, 624 N.W.2d 725 (Mich. 2001); *Chatham v. Blount County*, 789 So.2d 235 (Ala. 2001); *Bayfield County v. Maulers*, Case No. 99-2678 (Wisc. App, Distr. III, Aug. 15, 2000), *petition for review denied*, 619 N.W. 94 (Wis. 2000); *May v. Tri-County Trails Commission*, No. 97-0588 (Wis. App. 1997), *petition for review denied*, 589 N.W.2d 628 (Wis. 1998); *Cary v. CSX Transportation, Inc. and RTC*, No. 95-03311-CH (Mich. Cir. Ct., Gratiot Cty., April 19, 1996), *aff'd mem.*, No. 195528 (Mich. App. July 29, 1997); *Conrail v. Llewellyn*, 666 N.E.2d 958 (Ind. App. 1996), *petition for transfer granted* (Ind. S. Ct., Jun. 19, 1997); *Bigelow v. Michigan Dep't of Transportation*, No. 88-3199-CH (Mich. Cir. Ct., Benzie Cty.); *Grill v. West Virginia RR Maintenance Authority*, No. 20480 (W.V., Nov. 13, 1992); *Barney v. Burlington Northern RR*, 490 N.W.2d 726 (S.D. 1992), *cert. denied*, 113 S. Ct. 1263 (1993).

³ *Preseault v. U.S.A.*, 100 F.3d 1525 (Fed. Cir. 1996); *Chevy Chase Land Co. v. U.S.A.*, 37 Fed. Cl. 545 (1997), *aff'd*, (Fed. Cir., Dec. 17, 1999), *reh'g & reh'g in banc denied*, 2000 U.S.App. LEXIS 8520, 8521 (April 6, 2000), *cert. denied*, 121 S. Ct. 380 (Oct. 30, 2000); *Moore v. U.S.A.*, No.93-134L (Fed. Cl., filed March, 1993); *Glosemeyer v. U.S.A.*, No. 93-126L (Fed. Cl., filed March, 1993); *Town of Grantwood Village v. U.S.A.*, No. 98-176 L (Fed. Cl., filed Mar. 13, 1998); *Gray v. U.S.A.*, No. 4:99cv3154 (D. Neb., Filed May 17, 1999); *Bywaters v. U.S.A.*, Civil No. 6:99-CV-451 (E.D. TX); *Hash v. U.S.A.*, No. 99-324-S (D. Idaho, filed Aug., 1999).

20. This extensive involvement in the federal railbanking program and in litigation over the ownership issues raised by rails-to-trails conversions renders RTC uniquely suited to provide its views as *amicus curiae* to this Court.

CONCLUSION

For these reasons, Rails-to-Trails Conservancy respectfully requests that this Court enter the attached order granting them leave to participate in this case as *amicus curiae*, and that the attached *amicus* brief be filed.

Respectfully submitted,

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Dated: January 19, 2007

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CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of January 2007, a copy of the foregoing Motion of Rails-To-Trails Conservancy For Leave to File *Amicus Curiae* Brief in Support of Defendant's Motion for Summary Judgment, and the attached *Amicus Curiae* brief, were served by first-class mail, postage pre-paid, on:

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